ordered to reveal information that could be incriminating, "compliance could cause irreparable injury because appellate courts cannot always 'unring the bell' once the information is released." *Id.* at 460. Outside the narrow context presented in *Maness*, an attorney can be held in contempt for counseling disobedience with a court order. *See Maness*, 419 U.S. at 459-60; *Kleiner v. First National Bank of Atlanta*, 751 F.2d 1193, 1207-08 (11th Cir. 1985); *Fidelity Mortgage Investors v. Camelia Builders, Inc.*, 550 F.2d 47, 58 (2d Cir. 1976), *cert. denied*, 429 U.S. 1093 (1977), *rehearing denied*, 430 U.S. 976 (1977). In the present case, Dysart Taylor did not advise its clients to "take the Fifth;" it simply advised them not to make payments as ordered by the district court. The Eighth Circuit's decision to hold Petitioner in contempt for that advice fully adheres to this Court's precedents, including *Maness*.

The other precedents cited by Petitioner are similarly inapposite. *See In re McConnell*, 370 U.S. 230 (1962) (counsel's statement of his intent to ask questions on subjects forbidden by trial judge not contempt where counsel never actually asked any more such questions); *Offutt v. United States*, 348 U.S. 1 (1954) (holding that in circumstances of open personal hostility between counsel and trial judge, evaluation of contempt charges must be heard by another judge). The Court has simply never propounded a rule that attorneys may not be held in contempt for advising their clients to disobey a court order absent a showing of bad faith. Nothing required the Eighth Circuit to find bad faith by Dysart Taylor before holding that its advice to its client to disobey the district court's orders constituted contempt, and its decision should be left undisturbed by this Court.

II. The Petition Cites No Other Authority That Conflicts with the Eighth Circuit's Opinion.

The Eighth Circuit's holding that attorneys who advise their clients to disobey court orders may be held in contempt does not conflict with the decision of any other Circuit Court of Appeals. On the contrary, the courts that have spoken on the issue have all held that an attorney may be guilty of contempt for advising clients to disobey court orders, regardless of the attorneys' claims of "good faith." *Kleiner*, 751 F.2d at 1207-08; *Fidelity Mortgage*, 550 F.2d at 58. In *Kleiner,* attorneys advised their client to disregard the district court's order to refrain from contacting plaintiff class members. The attorneys argued that no sanctions should issue because their advice, though mistaken, was given in good faith. *Kleiner,* 751 F.2d at 1207. Observing that a lawyer may counsel or assist a client's good faith efforts to test the validity of the law in good conscience, the attorneys argued a lawyer who counsels disobedience to a standing court order stands firmly within ethical bounds. *Id.* at 1207-08. The court rejected that argument, noting:

> As a fundamental proposition, orders of the court "*must be obeyed* until reversed by orderly review or disrobed of authority by delay or frustration in the appellate process . . ."

Id. at 1208, quoting *United States v. Dickinson,* 465 F.2d 496, 509 (5th Cir. 1972), *cert. denied,* 414 U.S. 979 (1973) (original emphasis). The court further noted that "parties and counsel alike are bound by this admonition." *Id.*, citing *Maness v. Myers,* 419 U.S. at 459. "Disobedience of a court order unequivocally merits punishment save in instances in which compliance would necessarily result in 'an *irrevocable* and permanent surrender of a constitutional right.'" *Id.*,

quoting *In re Grand Jury Proceedings*, 601 F.2d 162, 169 (5th Cir. 1979). Upholding the district court's contempt sanction against the attorneys, the Eleventh Circuit concluded:

> When a court issues a ruling, a lawyer must advise his client to comply and must not counsel disobedience. The opposite result, if sanctioned, could only result in the unraveling of the rule of law. *There are few mandates so plain as the command to obey the order of the court.* Nevertheless, petitioners gave comfort and counsel to disobedience, in lieu of review. Under such circumstances, we conclude that the imposition of sanctions was an appropriate act by the district court in defense of its authority.

Id. (citations omitted) (emphasis added). Likewise, though in a less-studied case, the Second Circuit held a lawyer can be cited for contempt for advising his clients to disregard a court order. *Fidelity Mortgage*, 550 F.2d at 58. The Eighth Circuit is not at odds with the other U.S. Courts of Appeals that have spoken on this issue.

Finally, Petitioner cites the decisions — all over fifty years old — of two state supreme courts. But, like all the other precedents cited in the Petition, none of these decisions holds that a finding of bad faith is required before holding an attorney in contempt for advising a client to disobey court orders. In *In re Willis*, 5 So.2d 716 (Ala. 1941), the court found that the terms of an injunction were capable of more than one reasonable interpretation and thus it did not constitute contempt by the city's attorneys to construe the injunction in one of two reasonable ways. In *In re Landau*, 243 N.Y.S. 732 (1930), the court held that an attorney who had erroneously advised his client as to the effects of language in an order could not be held in contempt "*unless* it appears

that he did not limit himself to the giving of advice as to the validity of the order, but went beyond that and *advised a disregard of or disobedience of the order.*" *Id.* at 312 (emphasis added). In *Sidway v. Sidway*, 141 N.Y.S. 391 (1913), the court declined to hold an attorney in contempt given insufficient evidence that he had advised his client (also his brother) to leave the state without paying court-ordered alimony. And in *Oakley v. Cokalete*, 44 N.Y.S. 1070 (1897), the court, like this Court in *Watts*, declined to hold an attorney in contempt of an order staying a trial when the experienced trial judge agreed with the attorney's incorrect but reasonable contention that the order was invalid.

In sum, the Petition cites case after case for a proposition not one of them asserts: that courts may not hold attorneys in contempt for advising disobedience to court orders unless they first find that the attorneys were acting in bad faith. This is not the law, and the Eighth Circuit acted wholly consistently with the precedents of this Court, the other U.S. Courts of Appeals, and the state courts cited in the Petition. Attorneys may properly be held in contempt for counseling disobedience with court orders.

III. The Petition Raises No Other Issues of Significance Meriting This Court's Review.

The second portion of the Petition's Argument is simply a series of red herrings. Petitioner protests that its advice to its clients was *correct*, essentially seeking untimely review of the district court's interim payment orders. Petitioner raises vague, unsupported "policy" arguments having little to do with the facts of this case. Petitioner's attempts to puff this case up with false significance cannot mask the fact that Petitioners were properly held in contempt for advising their clients to ignore an order of the district court.

Petitioner asserts that it should not be held in contempt for giving *correct* advice, which is essentially an assertion that the district court's interim payment order was incorrect, invalid, or ineffective. But the time to challenge either the substance of the order or the district court's authority to enter the order has long since passed. Defendants appealed that order, the Eighth Circuit summarily affirmed, and the defendants' petition for a writ of certiorari was returned as untimely by this Court. Petitioner comes much too late in asking the Court now, seven years later, to reexamine the merits of the district court's order. Moreover, even if an attorney disagrees with a court order, he cannot simply counsel disobedience; he must seek to modify or overturn the order through lawful means. *Maness* at 458-59. Petitioner's argument that its advice was correct must be rejected.

The remainder of the Petition consists of Petitioner's fanciful "parade of horribles." Yet Petitioner's dire predictions as to the effects on the practice of law of the Eighth Circuit's decision have little to do with the realities of the present case. Nothing in the Eighth Circuit's decision subjects attorneys to contempt for pressing "novel or disfavored claims" in "unsettled" or "risky" areas of the law. (Petition at 19.) Petitioner was not pressing a novel or disfavored claim; it simply advised its client to disobey a court order. Nothing in the Eighth Circuit's decision will chill zealous advocacy on behalf of "financially distressed clients" with "competing legal and financial obligations." (Petition at 20.) Petitioner did not advise its client as to how to choose among "competing legal and financial obligations;" it advised its client to place its ordinary financial "obligations" before an order of the district court. Petitioner's assertion that "lawyers are increasingly being sued by non-parties under theories that lawyers owe duties to parties other than their clients," (Petition at 21), is not only wholly unsupported by

any evidence; it also has nothing to do with what happened in this case. The only "third party" to whom the Eighth Circuit claimed Petitioner owed a duty in this case was the district court; yet Petitioner breached that duty when it advised its client to flout the court's orders. Finally, and most astonishingly, Petitioner warns that the Eighth Circuit's decision "invites lawyers to consider their self-interest in avoiding the contempt penalty before representing and advising their clients to their clients' detriment." (Petition at 21.) It is *Petitioner's self-interested advice* that its client subject *itself* to contempt by paying attorneys' fees to Petitioner instead of making court-ordered payments to the Fund that brings this case before the Court.

In sum, the Petition raises no issues of sufficient moment to merit review by this Court. Zealous advocacy must be practiced within the bounds set by the courts. Advising clients to do whatever they want, regardless of what the courts have ordered them to do, while perhaps "zealous," is not advocacy but lawlessness. Principled legal advocacy can take place only in a world where the players respect the authority of the courts. The Eighth Circuit's insistence in the present case that Petitioner respect the district court's authority was reasonable and fully consistent with long-standing precedent. The Petition should be denied.

CONCLUSION

For all the foregoing reasons, Respondents respectfully request that the Petition be denied.

Respectfully Submitted,

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